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**Before the Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
	)	
Changes to the Board of Directors of	)	
the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

**Comments In Support of Petition For Reconsideration**

AirTouch Communications, Inc. ("AirTouch") respectfully submits these comments in support of the Petition for Reconsideration filed by Comcast Cellular and Vanguard Cellular ("Comcast Petition") in the above-captioned proceedings.<sup>1</sup> AirTouch is a company with interests in cellular, paging, personal communications services, satellite, and other operations. The Comcast Petition asks the Commission to reconsider its Report and Order and Second Order on Reconsideration in at least two respects: the calculation of contribution factors and the composition and by-laws of the Universal Service Administrative Company ("USAC").

The Comcast Petition asks that the Commission adopt annual payment cycles and contribution adjustments, rather than quarterly cycles. AirTouch agrees with Comcast that annual cycles will better mesh with existing business planning practices and reduce the administrative burdens. AirTouch also supports Comcast's view that the USAC Board of Directors is too heavily weighted in favor of interest groups who are more likely to be fund recipients than fund contributors. In order to ensure meaningful representation for those parties who contribute funds, but derive no revenues, the USAC by-laws must provide for super-majority voting and other mechanisms that require wide consensus before management decisions are approved.

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<sup>1</sup>"Federal State Joint Board on Universal Service," Report and Order, CC Docket No. 96-45, FCC 97-157 (May 8, 1997)("Universal Service Order"); "Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service," Report and Order and Second Order on Reconsideration, CC Docket No. 97-12, CC Docket NO. 96-45, FCC 97-253 (released July 18, 1997)("Reconsideration Order").

**I. The Commission Should Adopt Comcast's Recommendation to Direct The USAC To Calculate Annual, Not Quarterly, Contribution Factors**

In the Universal Service Order, the Commission directed the universal service administrator to report to the Commission on a quarterly basis information concerning both total payments made and expected contribution assessments for the next quarter. The Commission based the quarterly frequency of these reports on the lack of sufficient historical data to estimate accurately demand for the school and library discount program.<sup>2</sup> The Reconsideration Order accordingly directed the USAC to calculate quarterly contribution factors and to apply those factors to collect revenues.<sup>3</sup>

The Commission's rationale for this approach is flawed. First, although the Commission has no historical experience with the schools and libraries discount program, it has capped the total annual level of that program and therefore has some measure of the total funds likely to be required.<sup>4</sup> Also, as Comcast points out, the Commission has substantial experience with high-cost and low-income support programs, and those needs and costs will in fact be based on historical data or on a cost proxy model which will establish a relatively fixed level of high-cost support requirements.<sup>5</sup> Finally, AirTouch notes that for calculating the money paid out for high-cost support, the Commission has not required this level of precision. Rather, support payments will be based on existing support levels divided by the number of loops – as measured by an ILEC's annual loop count.<sup>6</sup> Previous universal service support mechanisms relied on annual submissions of LEC cost and demand data, and annual access tariff filings. Thus, the need for quarterly reports on the level of funding and individual contribution factors appears to be overstated.

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<sup>2</sup> Universal Service Order, para. 532.

<sup>3</sup> Reconsideration Order, para. 49.

<sup>4</sup> Universal Service Order, para. 533.

<sup>5</sup> Comcast Petition at 5, n.10; see also Reconsideration Order, para. 46, n.132 (USAC to project demand levels using historical data, until a cost proxy model is adopted).

<sup>6</sup> Universal Service Order, para. 288. Since the ILEC's support will be determined by an annual loop count there may be some lag between the time when a customer leaves the ILEC for a competitor and when the ILEC ceases receiving subsidy payments for that customer; this may result in a double subsidy being paid.

And while the Commission discusses the benefits of this approach in attaining an accurate estimate of funding requirements, it nowhere discusses the disruption of normal business planning that quarterly calculations would impose on contributing carriers. As Comcast points out, the Commission must take into account the difficulties and additional expense imposed on carriers by an unpredictable universal service obligation.<sup>7</sup> The Commission has noted its interest in minimizing the costs and disruptions caused by regulation, and it should do so here.<sup>8</sup>

AirTouch agrees that quarterly adjustments create significant business uncertainty which are likely to cause unnecessary harm to competitive, publicly traded companies, with few offsetting benefits. First, companies must plan comprehensively for particularly large expenditures such as universal service contributions so that expenses are evenly distributed throughout the year. If a different dollar figure for an expense is announced by the USAC every quarter, companies are unable to engage in this planning. Second, companies must plan out how to recover the costs of their contribution, and must base other business decisions on this expected income. Uncertainty as to the dollar figure that must be recovered also frustrates financial planning.

This uncertainty will also apply to external review of the contribution factors and contribution levels. Quarterly adjustments, with only a 14-day review period, are in fact less likely to achieve the Commission's goal of permitting meaningful public review of the USAC's projections. Annual review, in contrast, will allow the industry and the Commission ample time to examine and question the projections.<sup>9</sup>

The Universal Service Order notes that quarterly adjustment to the collection mechanism is intended to "ensure that funds will be available as needed while avoiding the potential problems arising from the accumulation of large amounts of funds in a federal universal service fund."<sup>10</sup> But the Commission seems not to have considered that excess funds may accumulate under either a

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<sup>7</sup>See Comcast Petition at 4.

<sup>8</sup>See, e.g., "Policy and Rules Concerning the Interstate, Interexchange Marketplace," Order on Reconsideration, CC Docket No. 96-61, FCC 97-293 (August 20, 1997)(noting the Congressional objectives of eliminating unnecessary regulatory requirements).

<sup>9</sup>See Comcast Petition at 6.

<sup>10</sup>Universal Service Order, para. 532 (footnote omitted).

quarterly or annual adjustment arrangement, or that it would be unfair and unlawful to withhold any such funds from the parties who contributed them. AirTouch agrees with Comcast that the Commission must modify the Reconsideration Order to provide a reimbursement mechanism for carriers that are assessed in error.<sup>11</sup>

The disruption to business planning cycles and the additional administrative burden of constantly changing contribution obligations should be weighed by the Commission on reconsideration, since it was not in the Reconsideration Order. AirTouch recommends that the Commission re-assess its approach, and instead direct the USAC to determine carriers' contribution factors on an annual basis.

## **II. The USAC By-laws Should Ensure Full Participation By All Directors**

Comcast correctly notes that the composition of the USAC Board is heavily weighted towards incumbent LECs and other beneficiaries of the fund. These parties have strong incentives to increase the size and scope of the fund, and the functions of the USAC.<sup>12</sup> AirTouch agrees that the Board should either be reconstituted, and/or some form of super-majority voting provisions included in the by-laws to ensure that the USAC's activities are adequately governed and there is full representation for those entities who are assessed universal service taxes but derive no revenues from the fund.<sup>13</sup>

The Commission should reconsider its decision to weight representation on the Board toward the ILECs and others who are the primary recipients of universal service tax revenue. In the Reconsideration Order, the Commission stated that, although IXC's will make a substantial portion of the universal service support contribution, it cannot allow IXC's or any other industry group to dominate the administration of the support mechanisms.<sup>14</sup> The Commission nevertheless

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<sup>11</sup>Comcast Petition at 6, n.13.

<sup>12</sup>Comcast Petition at 8 (noting that beneficiaries of the program hold 11 out of 17 seats).

<sup>13</sup>AirTouch recognizes that the Commission has already approved the USAC's incorporation and by-laws, and found them in compliance with the July 18<sup>th</sup> Reconsideration Order. See Public Notice, FCC 97-328 (September 15, 1997). Nevertheless, the Commission retains discretion to direct USAC to revise these documents pursuant to any revisions to the Reconsideration Order it adopts.

<sup>14</sup>Reconsideration Order, para. 35.

allocates only two positions to IXC's, one each to IXC's of differing sizes, while allocating three seats to representatives of schools. It is unclear why three school representatives are necessary, as the Commission does not discuss any distinction in interest between different categories of school representatives. And it is even less clear why those who contribute nothing are entitled to more representation than those whose earnings support the fund.

AirTouch agrees that requiring the vote of a super-majority would ameliorate this problem to some degree. Comcast proposes requiring an affirmative vote of 45% of the Board to vote affirmatively, establishing voting classes, and requiring a quorum of 80% of all board members.<sup>15</sup> AirTouch agrees that a quorum of 80% should be required, but is unclear as to how the 45% rule would protect minority interests. Noting that fund recipients comprise nearly 65% of the USAC Board, a super-majority requirement should be set at 65% or higher. This will ensure that at least one representative of entities who are primarily fund contributors, *i.e.*, IXC's, CMRS or CLECs, approves adoption of any particular measure.

Such a super-majority will also provide a check on USAC's natural incentive to favor measures that increase its power or scope of responsibilities. The USAC will be responsible for assessing significant taxes and distributing significant amounts of revenue, in some cases to ILECs who depend on that revenue for their economic survival. This degree of power must be subject to adequate controls. AirTouch supports those measures that the Commission has adopted, such as ensuring that the USAC Board, not NECA, will direct the activities of USAC employees, and sharply limiting the advocacy activities that the USAC may engage in before the Commission.<sup>16</sup>

The Commission has stated its intent to ensure that the USAC board is unbiased towards any particular industry group, and that USAC's expenses and activities will remain under Commission oversight.<sup>17</sup> AirTouch does not question the Commission's commitment to these goals. But even so, the history of USAC's parent company NECA demonstrates that corporations created by the Commission to perform specific administrative functions are subject to undue

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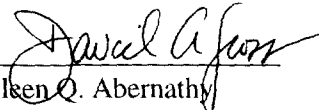
<sup>15</sup>Comcast Petition at 8.

<sup>16</sup> See Reconsideration Order, paras. 29-30.

<sup>17</sup>See Reconsideration Order, para. 41.

influence, have incentives to base decisions more on self-preservation than the public interest, and tend to expand their role in unanticipated ways.<sup>18</sup> AirTouch urges the Commission to strictly enforce all available measures to ensure that the USAC remains fully impartial and that its functions are limited to administration of the universal service support mechanisms as directed by the Commission.

Respectfully submitted,

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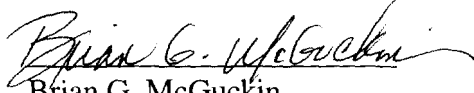
October 2, 1997

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<sup>18</sup>See, e.g., In the Matters of Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Process, Report and Order and Order to Show Cause, CC Docket No. 93-6, FCC 95-94 (March 8, 1995)(Commission finds that several NECA directors appeared to have participated in an attempt to influence improperly the CL pool earnings, and orders changes to NECA operations).

## CERTIFICATE OF SERVICE

I, Brian McGuckin, hereby certify that a copy of the foregoing comments of AirTouch Communications, Inc. was sent by hand or by United States first-class mail, postage prepaid, on this the 2<sup>nd</sup> day of October, 1997 to the parties on the following list.



Brian G. McGuckin

October 2, 1997

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